

MONTANA LEGISLATIVE HISTORY

Chapter 107 19 99

Bill H 352 S _____ Original bill & history X c

H. Committee on TRANSPORTATION

Hearing Date(s) 2/3 X c

EXEC. ACTION 2/8 X c

_____ c

_____ c

Date Out _____ c

S. Committee on AGRICULTURE

Hearing Date(s) 3/5 X c

EXEC. ACTION 3/8 X c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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H BILL NO. 352

INTRODUCED BY Brainard
Sliter (Primary Sponsor)

FRINER

A BILL FOR AN ACT ENTITLED: "AN ACT ENSURING CONTINUED ACCESS ACROSS PUBLIC LAND TO PRIVATE AND PUBLIC LAND; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purchase of historic easement or right-of-way across state land for benefit of private land. If a historic easement or right-of-way for access to private land exists across state land, the person owning the private land may purchase the easement or right-of-way as a permanent easement or right-of-way. Upon receipt of the fair market value of the easement or right-of-way and proof of the existence, purpose, and proposed purchaser's use of the easement or right-of-way, the board may sell a permanent easement or right-of-way if it is across school land or other land granted to the state for the support and benefit of a state institution and shall sell a permanent easement or right-of-way if it is across other state land.

NEW SECTION. Section 2. Purchase of historic easement or right-of-way across county land for benefit of private land. If a historic easement or right-of-way for access to private land exists across county land, the person owning the private land may purchase the easement or right-of-way as a permanent easement or right-of-way. The board of county commissioners shall sell a permanent easement or right-of-way upon receipt of the fair market value of the easement or right-of-way and proof of the existence, purpose, and proposed purchaser's use of the easement or right-of-way.

Section 3. Section 7-14-2615, MCA, is amended to read:

"7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) ~~No~~ An order to abandon ~~any~~ a county road ~~shall be~~ is not valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to access public land unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners."

Section 4. Section 60-2-107, MCA, is amended to read:

"60-2-107. Abandonment of highways -- exchange of roadways. (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(3) The commission may not abandon a highway, road, or right-of-way used to access public land unless another highway, road, or right-of-way provides substantially the same access.

(4) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners."

NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 14, and the provisions of Title 7, chapter 14, apply to [section 2].

NEW SECTION. Section 6. Effective date -- contingent effective date. (1) [Sections 2 through 5 and this section] are effective on passage and approval.

(2) If the Montana Supreme Court invalidates subsection (4)(a) of 77-1-130, [section 1] is effective on the date of the decision. If the Montana Supreme Court does not invalidate subsection (4)(a) of 77-1-130, then [section 1] is void.

- END -

FISCAL NOTE

Bill #: HB0352

Title: Revise access to public land

Primary

Sponsor: Matt Brainard

Status: As introduced

Brainard
Sponsor signature Date

Dave Lewis 1.27.99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:	0	0
Revenues:	0	0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. There is no fiscal impact to the DNRC or MDOT.

HB 352



Montana Legislature

Detailed Bill Information



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Bill Draft Number: LC1085

[Current Bill Text](#)

Bill Type - Number: HB 352

[Fiscal Note](#)

Short Title: Ensure continued access across public land to private & public land

Primary Sponsor: Matt Brainard

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/19/1999			
(H) Signed by Governor	03/18/1999			
(H) Transmitted to Governor	03/16/1999			
(S) Signed by President	03/16/1999			
(H) Signed by Speaker	03/15/1999			
(C) Sent to Printing	03/15/1999			
(H) Returned from Enrolling	03/13/1999			
(H) Sent to Enrolling	03/12/1999			
(S) Returned to House	03/12/1999			
(S) 3rd Reading Concurred	03/12/1999	41	8	
(S) Scheduled for 3rd Reading	03/12/1999			
(S) 2nd Reading Concurred	03/11/1999	43	7	
(S) Scheduled for 2nd Reading	03/11/1999			
(S) Scheduled for 2nd Reading	03/10/1999			
(S) Committee Report--Bill Concurred	03/09/1999			(S) Agriculture, Livestock and Irrigation
(S) Committee Executive Action--Bill Concurred	03/09/1999	10	1	(S) Agriculture, Livestock and Irrigation
(S) Hearing	03/05/1999			(S) Agriculture, Livestock and Irrigation
(S) Referred to Committee	02/22/1999			(S) Agriculture, Livestock and

				Irrigation
(S) First Reading	02/22/1999			
(H) Transmitted to Senate	02/20/1999			
(H) 3rd Reading Passed	02/20/1999	83	16	
(H) Scheduled for 3rd Reading	02/20/1999			
(H) 2nd Reading Passed as Amended	02/18/1999	82	17	
(H) Scheduled for 2nd Reading	02/18/1999			
(H) Committee Report--Bill Passed as Amended	02/11/1999			(H) Transportation
(H) Committee Executive Action--Bill Passed as Amended	02/10/1999	11	7	(H) Transportation
(H) Hearing	02/03/1999			(H) Transportation
(H) Fiscal Note Printed	01/28/1999			
(H) Fiscal Note Signed	01/28/1999			
(H) Fiscal Note Received	01/27/1999			
(H) Fiscal Note Requested	01/26/1999			
(H) Rereferred to Committee	01/22/1999			(H) Transportation
(H) Referred to Committee	01/22/1999			(H) Business and Labor
(C) Introduced Bill Text Available Electronically	01/22/1999			
(H) First Reading	01/21/1999			
(H) Introduced	01/21/1999			
(C) Draft Delivered to Requester	01/19/1999			
(C) Draft Ready for Delivery	01/05/1999			
(C) Draft in Assembly/Executive Director Review	12/30/1998			
(C) Draft in Final Drafter Review	12/30/1998			
(C) Bill Draft Text Available Electronically	12/29/1998			
(C) Draft in Input/Proofing	12/29/1998			
(C) Draft to Drafter/Edit Review (CAJ)	12/29/1998			
(C) Draft in Edit	12/29/1998			
(C) Draft in Legal Review	12/29/1998			
(C) Draft to Requester for Review	12/14/1998			
(C) Draft Request Received	12/04/1998			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Brainard	Matt	
Drafter	MacMaster	John	
Primary Sponsor	Brainard	Matt	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Property		Simple	PROP
Civil Procedure		Simple	CIV
State Lands		Simple	STLA

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Additional Bill Information

Probable Fiscal Note: Yes

Preintroduction Required: N

Session Law Ch. Number: 107

DEADLINE

Category: General Bills

Transmittal Date: 02/24/1999

Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
Section 1		Effective on the date of the Montana Supreme Court decision that invalidates subsection (4)(a) of 77-1-130; otherwise this section is void.
Sections 2-6	18-MAR-99	

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06/08/2007 04:42 PM Mountain Time

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TRANSPORTATION

Call to Order: By **CHAIRMAN SHIELL ANDERSON**, on February 3, 1999
at 3:15 P.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Shiell Anderson, Chairman (R)
Rep. Gary Beck, Vice Chairman (D)
Rep. Rick Jore, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Matt Brainard (R)
Rep. Paul Clark (D)
Rep. Robert C. Clark (R)
Rep. Steven Gallus (D)
Rep. George Golie (D)
Rep. Marian Hanson (R)
Rep. Donald L. Hedges (R)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Frank Smith (D)
Rep. Roger Somerville (R)
Rep. Cliff Trexler (R)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 323; HB 352; 1/29/99
Executive Action: None

Closing by Sponsor: Rep. Brainard closed the Hearing on HB 323.
{Tape : 1; Side : A; Approx. Time Counter : 37.7 - 43.2}

HEARING ON HB 352

Sponsor: Rep. Matt Brainard, HD 62.
{Tape : 1; Side : B; Approx. Time Counter : 0.4 - 5.6}

Proponents: Tony Schoonen, Butte, Public Lands Access
Association. EXHIBIT(trh27a02) EXHIBIT(trh27a03)
EXHIBIT(trh27a04).
{Tape : 1; Side : B; Approx. Time Counter : 5.6 - 10.9}

Bob Bugni, East Helena, Prickly Pear Sportsmen's Association.
EXHIBIT(trh27a05) EXHIBIT(trh27a06).
{Tape : 1; Side : B; Approx. Time Counter : 10.9 - 13.6}

Vince Fischer, Butte, Skyline Sportsmen.
{Tape : 1; Side : B; Approx. Time Counter : 13.6 - 16.2}

Jim Ludwick, Butte, PLAAI, State Land.
{Tape : 1; Side : B; Approx. Time Counter : 16.2 - 17.1}

Bill Holdorf, Butte, Skyline Sportsmen.
{Tape : 1; Side : B; Approx. Time Counter : 17.1 - 20.5}

Mike Collins, Helena, Independent Montana Miners.
{Tape : 1; Side : B; Approx. Time Counter : 20.5 - 22.6}

L. F. Thomas, Anaconda, Anaconda Sportsmen.
{Tape : 1; Side : B; Approx. Time Counter : 22.6 - 23}

Sam Babich, Butte, PLAAI.
{Tape : 1; Side : B; Approx. Time Counter : 23 - 24.8}

LeRoy Mehring, Butte, Skyline Sportsmen.
{Tape : 1; Side : B; Approx. Time Counter : 24.8 - 26.8}

Opponents: Jane Jelinski, Helena, MACO.
{Tape : 1; Side : B; Approx. Time Counter : 26.8 - 30.2}

John Munding, Montana Stock Growers' Association.
{Tape : 1; Side : B; Approx. Time Counter : 30.2 - 32.8}

Informational Witness: Tim Reardon, Chief Counsel, Department of
Transportation.
{Tape : 1; Side : B; Approx. Time Counter : 32.8 - 40.5}

HOUSE COMMITTEE ON TRANSPORTATION

February 3, 1999

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{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 0.9}

Questions from Committee Members and Responses: Rep. Golie to Jane Jelinski.

{Tape : 2; Side : A; Approx. Time Counter : 0.9 - 2.5}

Rep. Hedges to John Mundinger.

{Tape : 2; Side : A; Approx. Time Counter : 2.5 - 5.2}

Rep. Paul Clark to Rep. Brainard.

{Tape : 2; Side : A; Approx. Time Counter : 5.2 - 11.4}

Rep. Hanson to Rep. Brainard.

{Tape : 2; Side : A; Approx. Time Counter : 11.4 - 12.4}

Rep. Beck to John Mundinger.

{Tape : 2; Side : A; Approx. Time Counter : 12.4 - 15.7}

Rep. Bookout-Reinicke to Jane Jelinski.

{Tape : 2; Side : A; Approx. Time Counter : 15.7 - 19.1}

Rep. Adams to Rep. Brainard.

{Tape : 2; Side : A; Approx. Time Counter : 19.1 - 19.3}

Rep. Paul Clark to Jane Jelinski.

{Tape : 2; Side : A; Approx. Time Counter : 19.3 - 21.9}

Rep. Smith to Rep. Brainard.

{Tape : 2; Side : A; Approx. Time Counter : 21.9 - 26.3}

Closing by Sponsor: Rep. Brainard closed the Hearing on HB 352.

{Tape : 2; Side : A; Approx. Time Counter : 26.3 - 30}

EXHIBIT(trh27a07) EXHIBIT(trh27a08) EXHIBIT(trh27a09) given to Secretary after the Hearing.



**PUBLIC
LANDS
ACCESS
ASSOCIATION, INC.**

EXHIBIT 2
DATE 2-3-99
HB 352

Post Office Box 2 ■ Ramsay, Montana 59748-0002

Chairman Anderson and members of the Committee:

For the record, my name is Tony Schoonen of Butte and I'm here representing the Coalition for Appropriate Management of State Lands and the Public Lands Access Asso. .

Our groups wholeheartedly support H.B. 352 and we encourage your support for this long needed legislation. This bill gives clear direction to counties and the transportation department on important roads and highways that ensure public access to our public lands for present and future generations.

Over the past ten years, I've found that some counties try to maintain reasonable access to our public lands by passing ordinances to benefit the citizens of the county. This is the exception and not the rule, so over the years, thousands of acres of our public lands have been blocked as outfitters and wealthy out of staters lock up their piece of Montana for their exclusive use. They don't honor existing historic routes that have been in place since the time of statehood. When these special interest groups lock the gate they not only take inverse possession of the roadway but also the public lands that the road accessed.

This legislation will make it much more difficult for someone to close a gate and lock off a public right of way. Without a law in place, the burden of proof that the road is public falls on the shoulders of the users, not the people that locked the gate.

Our organizations have been working with three different county attorneys to help them prove that the public used the county roads prior to the time of statehood, and that many of these roads have had gas tax dollars collected from the state. These counties are Jefferson Powell and Sweetgrass.

The average citizen and working family member does not have the time, money or knowledge to fight public access problems. They are just trying to keep food on the table for their families..They need a place to recreate on the weekends and expect their local governments and public agencies to ensure public access to their public lands. Unfortunately, this is not the case. That's the reason that this legislative body must take the bull by the horns and give clear direction on this public access issue.

We appreciate Rep. Brainards' far sighted approach to this very important issue.

Please vote a "DO PASS" on H.B.352

"Putting The Public Onto Public Land"

Wednesday, February 3, 1999

OUR OPINION

Issue of next millennium will be public lands access

A dispute over a locked gate across a Big Timber-area road that leads to publicly owned Forest Service land is just the latest in a growing number of its kind with the promise of a lot more to come.

Two Big Timber-area landowners have placed the gate across the Cherry Creek Road where it crosses their land. They maintain it is their right to do so, even though the road was open to 16,000 acres of Gallatin National Forest for access by loggers and recreationists for as far back as anyone can remember.

The Public Lands Access Association has filed suit over the gate. The association has been on the front lines of a battle that will be one of the biggest for Montanans in the next millennium: Maintaining access to what is rightfully ours.

Public lands are arguably the biggest contributor to the often mentioned quality of life that is Montana's biggest draw to newcomers and most highly valued asset to natives.

Think about it: Do you like those panoramic, snow-covered, mountain vistas on every horizon? Public lands. Do you like hunting elk in an uncrowded stretch of forest where there's a real chance of bagging your quarry? Public lands. Do you draw serenely from the knowledge that an untrammeled patch of woods waits your sole presence within minutes of home, whenever you need it? Public lands.

CONT.

Public lands are valuable to each and every one of us. In fact, they're so valuable to some they've figured out ways of locking them up for their own private use by buying up private lands through which it is accessed. That's what's become of Gallatin National Forest lands that can only reasonably be accessed by the Cherry Creek Road.

And as the nation's population increases and open space become more and more scarce, wealthy individuals are going to concoct more and more plans for locking up public lands for private use.

This should serve as a clarion call to all Montanans who cherish their quality of life.

Fighting to keep public access open can be time-consuming and expensive. Establishing long-standing public use as a basis for continued access can be difficult when it's contested by good lawyers. Buying new public rights-of-way at platinum real estate market prices can be a big drain on taxpayer dollars.

We should all rally behind the Public Lands Access Association in their efforts, and we should demand that the Forest Service protect access to forest lands jealously — calling upon the help of our congressional delegation when necessary.

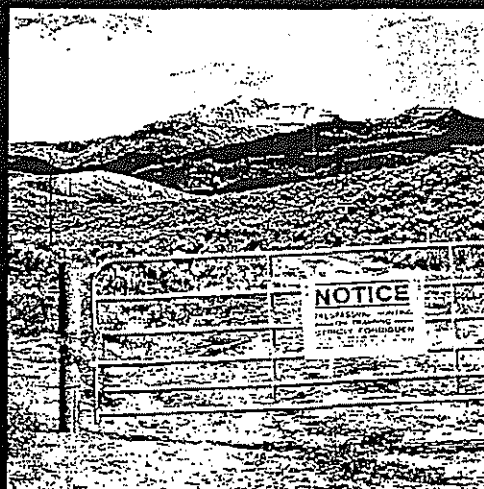
These are battles worth fighting. Because if we don't win them now, they can be lost forever. And that will be a real loss to each and every one of us.

EXHIBIT 3
DATE 2-3-99
HB 352

BOZEMAN DAILY CHRONICLE, Wednesday, February 3, 1999

4

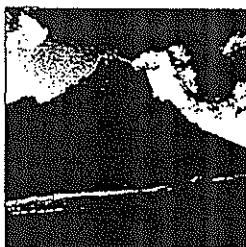
2-3-99
11B352



LOCKED OUT

How private owners are turning public lands — your lands, your constituents' lands — into their own private property by seizing control of access roads and locking the gates.

Here's the whole story: The enormity of the problem, what you can do about it today, and what the American people and the President think.



The Private Landowner Perspective

Blocked access has been increasing over the past decade as the use of public land has been growing. In some cases the closed roads are public roads, bought and paid for with public dollars. However, without continued investment in upkeep and careful documentation of the existence of the road, a private landowner can put a gate up and close off access to adjacent public lands.

Private landowners are increasingly blocking access to public land for a number of reasons. In some cases, the landowners have legitimate gripes. Vandalism, trespassing, poaching, liability and the desire for privacy are all factors in landowners "locking the gates." Outdoorsmen who cross private land to access public land have a special responsibility to ensure that private landowners' rights are respected.

However, nefarious reasons also exist for blocking access, including obtaining exclusive personal use of vast tracts of public land and the ability to maintain guiding operations for hunting or fishing with exclusive use of public land. For example, a guided hunt operation in Montana boasted of its exclusive use of 25,000 acres of National Forest in a brochure because it was able to block the only access to these public lands.

Solutions

The key to solving the access dilemma is to elevate the level of concern about the issue among the Administration and the Congress. The agencies have the needed authority and tools to solve the problems, but they need to be directed to use them and given the resources to carry out the programs. Three primary solutions exist:

1) Document where legal access already exists. According to the Public Lands Access Association, Inc., 80 percent of all blocked lands are situations where legal access already exists. Legal resources devoted to documenting existing access would have a large payback to the public.

"I would work to ensure appropriate access to public lands"

—President Clinton

2) Presently, the primary method agencies use to enhance access is to purchase easements, a preferable alternative to condemnation. Such acquisitions should be made a separate line-item in the Forest Service and BLM budgets, and additional funds should be allocated to purchase easements in areas such as Montana where problems are particularly severe.

3) Some private land passes through public ownership when there are defaults on federal loans such as those through the Farmers Home Administration. Rarely does the lending agency place easements on the land for public access prior to resale. This solution, without a direct cost to the U.S. Treasury, should become standard operating procedure as an easy-to-implement approach to increasing the public's ability to use its land.

To implement these and other solutions, Congress needs to focus on this problem. Oversight hearings on the GAO report is a good first step to emphasize that the BLM and Forest Service maintain an innovative public access program to acquire and defend public rights, while mitigating private landowner concerns through improved public education about responsible outdoor behavior.

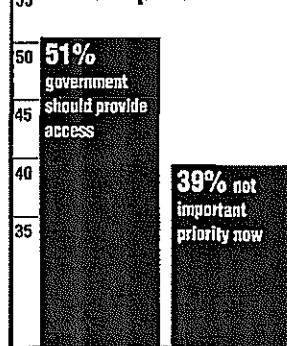
What the People Want

The public wants the government to focus on the access problem now. In a recent public opinion survey by The Roper Organization for Times Mirror Magazines, Americans were asked: "Do you think the Federal Government should find a way to provide access to public land at this time, or isn't this an important priority now?" Over half, 51%, responded that the government should provide access, while 39% felt this was not an important priority now.

President Clinton feels this is an important issue. In a pre-election interview that appeared in all the Times Mirror magazines and newspapers, reaching 40 million people, he stated, "I would work to ensure appropriate access to public lands."

The time for action to improve public access has arrived. Can Congress and the Administration respond to this need?

Public Opinion

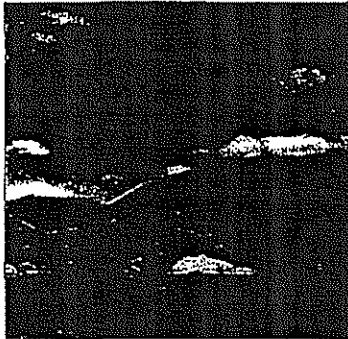


Source: Roper Organization for Times Mirror Magazines

You're returning from a trip. You make the usual turn into your driveway and stop dead in your tracks. While you were gone, someone put up a locked gate and a sign that calls you a trespasser for wanting to enter your own property.

Your driveway has always passed through about three feet of your neighbor's yard. It's never been a problem before, but someone new just bought the property and doesn't believe in sharing.

You can see your house, but you can't get there anymore.

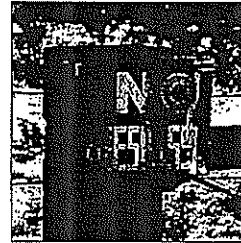


Blocked lands

A preposterous scenario? Yes. But something very much like it is occurring with alarming frequency throughout the Great American West. Vast tracts of public lands are cut off from their rightful owners – the American people – by owners of neighboring private property who simply gate access roads and lock you, the people, and officers of the Forest Service and Bureau of Land Management (BLM) out.

One result is that every American citizen loses the potential opportunity to use the lands that belong to each of us. Another is that the land and access roads cannot be properly managed or maintained by BLM or Forest Service.

There's another result, as well. The private landowners who happen to own the access routes wind up with de facto ownership and exclusive use of your public lands.



Twenty-two Yellowstone National Parks: Off Limits

About a third of our nation is public land – over 700 million acres. Most of this land is managed by the Forest Service and BLM, 465 million acres in total.

The General Accounting Office (GAO), at the request of Congressman Bruce Vento, the Chairman of the Sub-committee on National Parks and Public Lands, has released a study of the extent and effects of blocked public access to public lands. The GAO found that 50.4 million acres, or about 14 percent, of Forest Service and BLM land in the contiguous United States has blocked public access. This area is about the size of Virginia, Maryland, New Jersey, Delaware, Massachusetts, New Hampshire and Vermont added together. Imagine 22 Yellowstone National Parks being off-limits to the public, and you can understand the consequences of 50.4 million acres of blocked public access.

Opportunities to use public lands are lost due to blocked access. The main activities that are affected are hunting and off-road vehicle use. But, the GAO has also documented losses of fishing, hiking, mountain biking, camping and pleasure-driving opportunities. Construction, trail and road maintenance and wildlife habitat management by the public agencies are also severely impacted. Not only is use blocked, but public natural resources deteriorate due to an inability of the public agencies to manage the lands.

The biggest problems are in Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah and Wyoming due to the checkerboard ownership created when the West was settled.

But the problem is not just something for Westerners to worry about. Anyone who has traveled to the West for outdoor recreation is impacted. And with outdoor recreation the \$300 billion industry it is, jobs are affected everywhere.

HOUSE OF REPRESENTATIVES
56th LEGISLATURE

EXHIBIT 5
DATE 2-3-99
HB 352

Transportation COMMITTEE

WITNESS STATEMENT

Please Print

NAME BOB BUGNI BILL NO. 352

ADDRESS 3865 REMINGTON ST DATE 2/3/99

WHOM DO YOU REPRESENT? PRICHTLY PEAK SPORTSMEN & RECREATION ASSOCIATION NT WITH MWF

SUPPORT ✓ OPPOSE AMEND

COMMENTS:

PRICHTLY STRONGLY SUPPORT THIS BILL. NEED TO KEEP
ACCESS TO PUBLIC LAND. BIG ISSUE WITH
MONTANA SPORTSMEN !!

AT A MINIMUM THE COUNTY ROAD OR RIGHT-
OF-WAY SHOULD BE OFFERED TO THE PUBLIC
LANDS MANAGEMENT AGENCIES.

MR JANSEN WITH MWF HAD TO LEAVE & ASK
ME TO PRESENT HIS TESTIMONY. ATTACHED
STORY FROM BOZEMAN DAILY CHRONICLE DATED
2/3/99 (OPINION SECTION)

↓ OVER
↓

HB 352 - would ENSURE THAT WE HOLD ON TO
ACCESS WE ALREADY HAVE WHILE WE STRIVE TO
DEVELOP ADDITIONAL AVENUES TO ACCESS OUR PUBLIC
LANDS. WE, PPSA & MWF, URGE YOU TO SUPPORT
HB 352.

EXHIBIT
2/3/99 2-3-99
HB 352

Wednesday, February 3, 1999

OUR OPINION

Issue of next millennium will be public lands access

Post-It Fax Note 7671

To	From	Date	# of pages
Co./Dept.	Co.	2/3	1
Phone #	Phone #		
Fax #	Fax #		

Tony Jewell
Michael Scott
guy C

A dispute over a locked gate across a Big Timber-area road that leads to publicly owned Forest Service land is just the latest in a growing number of its kind with the promise of a lot more to come.

Two Big Timber-area landowners have placed the gate across the Cherry Creek Road where it crosses their land. They maintain it is their right to do so, even though the road was open to 16,000 acres of Gallatin National Forest for access by loggers and recreationists for as far back as anyone can remember.

The Public Lands Access Association has filed suit over the gate. The association has been on the front lines of a battle that will be one of the biggest for Montanans in the next millennium: Maintaining access to what is rightfully ours.

Public lands are arguably the biggest contributor to the often mentioned quality of life that is Montana's biggest draw to newcomers and most highly valued asset to natives.

Think about it: Do you like those panoramic, snow-covered, mountain vistas on every horizon? Public lands. Do you like hunting elk in an uncrowded stretch of forest where there's a real chance of bagging your quarry? Public lands. Do you draw serenity from the knowledge that an untrammelled patch of woods waits your sole presence within minutes of home whenever you need it?

Public lands.

Public lands are valuable to each and every one of us. In fact, they're so valuable to some they've figured out ways of locking them up for their own private use by buying up private lands through which it is accessed. That's what's become of Gallatin National Forest lands that can only reasonably be accessed by the Cherry Creek Road.

And as the nation's population increases and open space become more and more scarce, wealthy individuals are going to concoct more and more plans for locking up public lands for private use.

This should serve as a clarion call to all Montanans who cherish their quality of life.

Fighting to keep public access open can be time-consuming and expensive. Establishing long-standing public use as a basis for continued access can be difficult when it's contested by good lawyers. Buying new public rights-of-way at platinum real estate market prices can be a big drain on taxpayer dollars.

We should all rally behind the Public Lands Access Association in their efforts, and we should demand that the Forest Service protect access to forest lands jealously — calling upon the help of our congressional delegation when necessary.

These are battles worth fighting. Because if we don't win them now, they can be lost forever. And that will be a real loss to each and every one of us.

NO 352 WOULD
ENSURE THAT
WE HAD ON TO
ACCESS
MAKING WE ALREADY
WE STRIVE TO
DEVELOP
ADDITIONAL
ALLEGES
TO ACCESS
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THAT
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240001
40
352

FLATHEAD WILDLIFE, Inc.
P.O. BOX 4
KALISPELL, MONTANA 59903

EXHIBIT 7
DATE 2-3-99
HB 352

February 2, 1999

97

TO: Representative Matt Brainard

From: Warren Illi, President
Flathead Wildlife, Inc.

Flathead Wildlife, Inc. is northwest Montana's oldest and largest sportsmen club. We want you to know that our membership is solidly behind your proposal, HB-352, to not let public agencies abandon public roads which cut off or greatly reduce public access to our public lands. Our sportsmen club members hunt and fish all over Montana. We have experienced being shut out of previously accessed public lands because of county road abandonment. That nonsense must stop.

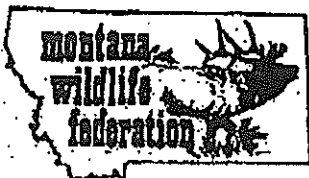
Please let us know what we can do to help get this bill passed.

Thanks,

Warren Illi

Warren Illi

CC: Roger Somerville
Paul Clark



The Wealth Of Our Nation Is In Its Natural Resources
Preserve It By Conservation, Not Conversation



Leg House

From: jmcdermand@desktop.org
Sent: Tuesday, February 02, 1999 3:17 PM
To: house@state.mt.us
Subject: House Bill - 352

EXHIBIT 8
DATE 2-3-99
HB 352

Representative Rainard

Although we are not from your House District, we commend you for your introduction of HB 352. We offer our support as sportsmen of Montana in your effort to maintain public access to public lands. Thank you.

Ron Litostansky, President - - - Russell Country Sportsmen - P.O. Box
282 - Great Falls, MT 59403

EXHIBIT 9
DATE 2-3-99
HB 352

Western Montana Fish and Game Association

P.O. Box 4294
Missoula, Montana 59806

Preserving Montana's Hunting Heritage

February 3, 1999

Representative Matt Brainard
House Transportation Committee
Capitol Station
Helena, Montana 59620 VIA FAX

(97)

Dear Representative Brainard,

On behalf of the members of the Western Montana Fish and Game Association, I urge you to support HB 352.

The Western Montana Fish and Game Association is Montana's oldest and largest regional organization of sportsmen and women. WMFGA was founded in 1911, and has over 1,000 members in Western Montana.

We believe that HB 352 would help insure access by sportsmen and other outdoor recreationsits to public lands. Restriction of hunting and fishing access will probably be one of the most critical issues for sportsmen in coming years. We believe that HB 352 will help this growing problem.

Thank you very much for your attention, and for your help with HB 352.

Sincerely yours,

Gary

Gary S. Marbut, Secretary
Chairman, Public Policy Committee

HOUSE OF REPRESENTATIVE ROLL CALL

TRANSPORTATION

COMMITTEE

DATE 2-3-99

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Shiell, Chair	✓		
Jore, Rick, Vice Chair Maj.	✓		
Beck, Gary, Vice Chair, Min	✓		
Adams, Darrel	✓		
Barnett, Joe	✓		
Bookout-Reinicke, Sylvia	✓		
Brainard, Matt	✓		
Clark, Robert	✓		
Clark, Paul	✓		
Gallus, Steven	✓		
Golie, George	✓		
Hanson, Marian	✓		
Hedges, Donald	✓		
Juneau, Carol	✓		
Matthews, Gary	✓		
Smith, Frank	✓		
Somerville, Roger	✓		
Trexler, Cliff	✓		

MONTANA HOUSE OF REPRESENTATIVES

VISITORS REGISTER

Transportation

DATE 2-3-99

BILL NO. HB 352

SPONSOR(S) Rep. Brannan

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	Tony Schoon	Butte	PLAAI State Land
☒ POI	Jim Ludwick	Butte	PLAAI State Land
☒ POI	Bill Holdorf	BUTTE	SKYLINE SPORTSMEN
☒ POI	L.F. Thomas	PALESONDA	PALESONDA SPORTSMEN
☒ POI	Robert Melning	Butte	skyline sportsmen
☒ POI	BOB BUGA	E HELENA	PRICKLY PEAR SPORTSMEN
☒ POI	Vince Fischer	Butte	SKYLINE SPORTSMEN
☒ POI	Chris Johnson	Helena	Montana Wildlife Education
☒ POI	SAUL BABICH	BUTTE	PLAAI Skyline
☒ POI	Jane Selinski	Helena	MAPO
☒ POI	John Munkiewicz	Helena	MSGA
☒ POI	MIKE COLLINS	HELENA	UMA - IMM
☐ POI			
☐ POI			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TRANSPORTATION

Call to Order: By VICE CHAIRMAN RICK JORE, on February 8, 1999
at 3:00 P.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Shiell Anderson, Chairman (R)
Rep. Gary Beck, Vice Chairman (D)
Rep. Rick Jore, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Matt Brainard (R)
Rep. Paul Clark (D)
Rep. Robert C. Clark (R)
Rep. Steven Gallus (D)
Rep. George Golie (D)
Rep. Marian Hanson (R)
Rep. Donald L. Hedges (R)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Frank Smith (D)
Rep. Roger Somerville (R)
Rep. Cliff Trexler (R)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 356; HB 329; 2/4/99
Executive Action: HB 259, TABLED; HB 377,
TABLED; HB 352, DPAA;

Vote: The DO PASS motion on HB 323 failed on a 9 - 9 tie vote.
{Tape : 3; Side : A; Approx. Time Counter : 19.1 - 20.4}

Motion/Vote: REP. BRAINARD moved the Committee draft a Bill. .
Motion carried unanimously 18-0.
{Tape : 3; Side : A; Approx. Time Counter : 20.4 - 22.4}

EXECUTIVE ACTION ON HB 352

Motion: REP. BRAINARD moved that HB 352 DO PASS.
{Tape : 3; Side : A; Approx. Time Counter : 22.4 - 23.6}

Discussion: Reps. Trexler, Brainard, Bob Clark, Paul Clark.
{Tape : 3; Side : A; Approx. Time Counter : 23.6 - 30.1}

Motion: REP. PAUL CLARK moved that HB 352 BE AMENDED.
{Tape : 3; Side : A; Approx. Time Counter : 30.1 - 30.6}

Discussion: Reps. Brainard, Paul Clark, Anderson, Hedges,
Trexler, Leanne Kurtz, Beck.
{Tape : 3; Side : A; Approx. Time Counter : 30.6 - 31}
{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 8}

Rep. Paul Clark withdrew his amendment.
{Tape : 3; Side : B; Approx. Time Counter : 8 - 8.1}

Motion/Vote: REP. PAUL CLARK moved that HB 352 BE AMENDED to
strike "right-of-way" and insert "nonexclusive". Motion carried
17-1 with Rep. Anderson voting no.
{Tape : 3; Side : B; Approx. Time Counter : 8.1 - 9.1}

Motion: REP. BRAINARD moved that HB 352 DO PASS AS AMENDED.
{Tape : 3; Side : B; Approx. Time Counter : 9.1 - 9.3}

Discussion: Reps. Anderson, Hedges, Brainard.
{Tape : 3; Side : B; Approx. Time Counter : 9.3 - 17.1}

Substitute Motion/Vote: REP. HANSON moved that HB 352 BE TABLED.
Motion failed 7 - 11.
{Tape : 3; Side : B; Approx. Time Counter : 17.1 - 18.4}

Discussion: Reps. Bookout-Reinicke, Beck, Trexler, Brainard,
Golie, Smith, Paul Clark, Adams.
{Tape : 3; Side : B; Approx. Time Counter : 18.4 - 23.1}

HOUSE COMMITTEE ON TRANSPORTATION

February 8, 1999

PAGE 8 of 9

Vote: HB 352 DO PASS AS AMENDED motion carried 11 - 7 with
Reps. Anderson, Barnett, Hanson, Juneau, Smith, Somerville and
Trexler voting no.

{Tape : 3; Side : B; Approx. Time Counter : 23.1 - 25.4}

HOUSE OF REPRESENTATIVE ROLL CALL

TRANSPORTATION

COMMITTEE

DATE 2-8-99

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Shiell, Chair	✓		
Jore, Rick, Vice Chair Maj.	✓		
Beck, Gary, Vice Chair, Min	✓		
Adams, Darrel	✓		
Barnett, Joe	✓		
Bookout-Reinicke, Sylvia	✓		
Brainard, Matt	✓		
Clark, Robert	✓		
Clark, Paul	✓		
Gallus, Steven	✓		
Golie, George	✓		
Hanson, Marian	✓		
Hedges, Donald	✓		
Juneau, Carol	✓		
Matthews, Gary	✓		
Smith, Frank	✓		
Somerville, Roger	✓		
Trexler, Cliff	✓		



HOUSE STANDING COMMITTEE REPORT

February 10, 1999

Page 1 of 2

Mr. Speaker:

We, your committee on **Transportation** report that **House Bill 352** (first reading copy -- white) do pass as amended.

Signed: 
Representative Shuell Anderson, Chair

And, that such amendments read:

1. Page 1, line 10.

Strike: "or right-of-way"

2. Page 1, line 12.

Following: the third "the"

Insert: "nonexclusive"

Strike: "or right-of-way"

3. Page 1, line 12.

Following: "permanent"

Insert: ", nonexclusive"

4. Page 1, line 13.

Following: the first "easement"

Strike: "or right-of-way"

Following: the second "easement"

Strike: "or right-of-way"

5. Page 1, line 14.

Following: "existence"

Strike: ", "

Insert: "of the easement or right-of-way and the"

Following: "purpose"

Strike: ", "

Following: the second "the"

Committee Vote:

Yes 11, No 7.

331108SC.ham
2/10 vmp

Insert: "nonexclusive"
Strike: "or right-of-way"

6. Page 1, line 15.
Following: "permanent"
Insert: "nonexclusive"
Strike: "or right-of-way"

7. Page 1, line 16.
Following: "permanent"
Insert: "nonexclusive"
Strike: "or right-of-way"

8. Page 1, line 19.
Strike: "or right-of-way"

9. Page 1, line 21.
Following: the third "the"
Insert: "nonexclusive"
Strike: "or right-of-way"

10. Page 1, line 22.
Following: the first "permanent"
Insert: ", nonexclusive"
Strike: "or right-of-way"

11. Page 1, line 22 through line 23.
Following: the second "permanent" on line 22
Insert: ", nonexclusive"
Following: the first "easement" on line 23
Strike: "or right-of-way"
Following: the second "easement" on line 23
Strike: "or right-of-way"

12. Page 1, line 24.
Following: "existence"
Strike: ", "
Insert: "of the easement or right-of-way and the"
Following: "purpose"
Strike: ", "
Following: the second "the"
Insert: "nonexclusive"
Strike: "or right-of-way"

- END -

331108SC.ham

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION

COMMITTEE

DATE 2-8-99 BILL NO. HB 952 NUMBER 7

MOTION: Rep. Brainard moved Do Pass

NAME	AYE	NO
Anderson, Sheill, Chair		
Jore, Rick, Vice Chair Maj		
Beck, Gary, Vice Chair Min		
Adams, Darrel		
Barnett, Joe		
Bookout-Reinicke, Sylvia		
Brainard, Matt		
Clark, Robert		
Clark, Paul		
Gallus, Steven		
Golie, George		
Hanson, Marian		
Hedges, Donald		
Juneau, Carol		
Matthews, Gary		
Smith, Frank		
Somerville, Roger		
Trexler, Cliff		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION

COMMITTEE

DATE 2-8-99 BILL NO. NB 352 NUMBER 8

MOTION: Rep. Paul Clark moved That NB 352
be amended to strike "right-of-way" &
insert "non-exclusive."

NAME	AYE	NO
Anderson, Sheill, Chair		✓
Jore, Rick, Vice Chair Maj	✓	
Beck, Gary, Vice Chair Min	✓	
Adams, Darrel	✓	
Barnett, Joe	✓	
Bookout-Reinicke, Sylvia	✓	
Brainard, Matt	✓	
Clark, Robert	✓	
Clark, Paul	✓	
Gallus, Steven	✓	
Golie, George	✓	
Hanson, Marian	✓	
Hedges, Donald	✓	
Juneau, Carol	✓	
Matthews, Gary	✓	
Smith, Frank	✓	
Somerville, Roger	✓	
Trexler, Cliff	✓	
	17	1

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION

COMMITTEE

DATE 2-8-99 BILL NO. NB352 NUMBER 9

MOTION: Rep. Hanson moved to Table NB352
Motion failed 7-11

NAME	AYE	NO
Anderson, Sheill, Chair	✓	
Jore, Rick, Vice Chair Maj		✓
Beck, Gary, Vice Chair Min		✓
Adams, Darrel		✓
Barnett, Joe	✓	
Bookout-Reinicke, Sylvia		✓
Brainard, Matt		✓
Clark, Robert		✓
Clark, Paul		✓
Gallus, Steven		✓
Golie, George		✓
Hanson, Marian	✓	
Hedges, Donald		✓
Juneau, Carol	✓	
Matthews, Gary		✓
Smith, Frank	✓	
Somerville, Roger	✓	
Trexler, Cliff	✓	
	7	11

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

TRANSPORTATION

COMMITTEE

DATE 2-8-99 BILL NO. HB 352 NUMBER 10

MOTION: Rep. Brainard moved HB 352
Do Pass As Amended

NAME	AYE	NO
Anderson, Sheill, Chair		✓
Jore, Rick, Vice Chair Maj	✓	
Beck, Gary, Vice Chair Min	✓	
Adams, Darrel	✓	
Barnett, Joe		✓
Bookout-Reinicke, Sylvia	✓	
Brainard, Matt	✓	
Clark, Robert	✓	
Clark, Paul	✓	
Gallus, Steven	✓	
Golie, George	✓	
Hanson, Marian		✓
Hedges, Donald	✓	
Juneau, Carol		✓
Matthews, Gary	✓	
Smith, Frank		✓
Somerville, Roger		✓
Trexler, Cliff		✓
	11	7

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By CHAIRMAN REINY JABS, on March 5, 1999 at 3:04 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: Sen. Gerry Devlin,

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 345, HB 352, HB 571,
2/23/99
Executive Action: HB 571

HEARING ON HB 345

Sponsor: REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON

Proponents: David Burch, Jefferson County Weed Supervisor
Marty Malone, Park County Extension

Weeds are different everyplace in Montana. In the west, it's spotted knapweed; in the east, it's leafy spurge. Somewhere else it might be hounds tongue. Each county has a significantly different problem than the next county may have. That's why the counties want you to bring it to them so they can have some influence over what is taking place in their counties where their landowners are the ones putting in a fortune to fight weeds brought to them by roads. It isn't fair to allow private landowners and our public lands to be devastated by a project that can be made weed free. But that's what we're doing presently.

I don't accept this time frame thing. If we had said July 1, 1999 it would have been difficult for everyone to get organized. We gave them 29 months to get ready for this. We know they can adjust their operations to be prepared for it. The State Weed Board and Extension Agents came here to tell you that we have to make them do it because they're not doing it now. What happened in Park County this summer is ample proof. Everyone is satisfied and knows this is important except those people who are afraid it may get in the way of how they're presently conducting their business. We're going to make them change how they conduct their business so we get a better grip on noxious weeds in Montana.

{Tape : 1; Side : B; Approx. Time Counter : 4.02}

HEARING ON HB 352

Sponsor: REPRESENTATIVE MATT BRAINARD, HD 62, MISSOULA

Proponents: Bill Fairhurst, Public Land Access Assoc.
Tony Schoonen,
Bill Holdorf, Skyline Sportsmen's Assoc.
Leroy Mehring, Skyline Sportsmen
Sam Babich, PLAAI
Jim Ravndal

Van Jamison, Montana Wildlife Federation
Mike Collins, Montana Independent Miners
Bob Bugni, Prickly Pear Sportsmen
L. F. Thomas, Anaconda Sportsmen
Stan Frasier, Montana Wildlife Federation

Opponents: John Mundinger, Montana Stock Growers Assoc.

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, HD 62, This bill is fairly simple, ensuring continued access across public land to private and public land. In Section 1, page 1, line 10, we're dealing with the ability of a private landowner who has traditional access across state property be able to purchase a nonexclusive easement on that right-of-way to get some kind of proper right. South of my district there are people who have a piece of property they farm. They have to cross about 300 feet of state land to access it from the highway. They cannot get a loan on that property because the State will not give a permanent easement. They have a large piece of land they've worked, but in a sense it's valueless even though they are taxed on it, because they are not guaranteed access to that property. Hopefully this section would provide a vehicle for that type of easement.

Section 2 deals with the same situation on county land. Section 3 is the abandonment of county roads. On page 2, amended into the existing statute we have "the board may not abandon the county road or right-of-way used to access public land unless another public road or right-of-way provides the same access". In Section 4, the board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment. This arises from a situation in the Bitterroot where a road that accessed a state school section was abandoned by the county and cut off access to the property owner back on that road.

Our roads and highways are our basic economic infrastructure. Every part of the world, if they want to develop economically, has to put in an adequate system of transportation for access to work and use the land. Hopefully by passing this bill, we'll keep a number of roads open when there's a temptation to close them because of some of the economic problems the counties now have and maybe a lack of interest. In western Montana, we're seeing a destruction of federal roads and closure of federal property, which is public land. I hope we would be able to keep our county roads open to the juncture spots so people would be able to access that resource. In the event we can perhaps force the Federal Government to keep those roads open, we'll be able to continue the timber management. We'd be able to keep our county roads open as well.

Proponents' Testimony:

Bill Fairhurst, Public Land Access Assoc. Our goal is to get the public to their public lands. There is an immediate need to ensure continued access across public land to both private and public lands. The very irony of the present access situation is

that numerous private landowners are coming to appeal for information and support in gaining access to their private lands.

I thought of a couple names on the way here who have contacted our organization regarding access to private lands. Mr. Chuck Alkire and his daughter Sherri of Big Timber have 2,000 acres of lands in the Big Timber area. The road goes through a state school section and they have been denied access through that section. That road has been in existence since the 1800's. Prescriptive right addresses the problem across private lands but not across public lands. Another name is Nancy Bushaw of Townsend. She has 160 acres in the 16 Mile Creek area. On the east side of her is Ted Turner and his ranch, on the west side is our landowners. The road goes through state school trust section and again, she is being denied access. She has been broken financially by the legal cost of trying to get to her private lands. This bill, I believe, addresses some of these problems.

Public lands are our shared estate, but we are all robbed of this commonwealth if the road that gives us entry is blocked. This is occurring not only in Montana but throughout the great American West. You'd be surprised at the number of phone calls from people who contacted me not only in this state but in other states trying to get access to their public lands. HB 352 gives recognition to the fact that in addition to private property rights, there are also public rights and resources held in common that need to be articulated and understood. Section 3, paragraph 3 we very strongly support.

While I was president of Public Land Access we became involved in three litigations. The Cherry Creek Road out of Big Timber gave access to 15,000 acres of pristine U.S. Forest Service Lands. **SEE EXHIBIT(ags50a06)**. Access to that land was recently cut off by two individual property owners who are very influential men on Wall Street. This was an abandoned county road. Section 3, paragraph 3 addresses that problem. We will have to go through court in order to open that road at the present time. A road in Powder River accessing 15,000 acres of BLM land was cut off. The BLM now is trying to bring access through another road. The Copper City road ten miles north of Three Forks accesses an old abandoned mining camp and a couple thousand acres of BLM land. A county road goes right to that sight. The landowner took it upon himself to chain and lock the gate on a county road. Last week we met with the Broadwater County Commissioners and brought in the Bureau of Land Management. We're trying to work out a cooperative agreement where the Bureau of Land Management will take over an alternate route which is also an abandoned county road to give access.

It's a good bill that addresses the problems of access, not only to public lands but to private lands.

Tony Schoonen, Coalition for Appropriate Management of State Lands, Secretary/Treasurer of Public Land Access, also speaking for the **Billings Rod and Gun Club** and the **Southeastern Sportsmens Group**. I want to make sure their concerns for the support of this bill is felt. A man from Butte has a small acreage of property next to Turner's property in the Snow Crest. It crosses two sections of state land and he's been unable to work out a deal with DNRC to gain access to his property.

Wealthy out-of-staters are coming into the state. They don't seem to recognize the needs of private property owners or public land users. It's important we as recreational groups and you as the legislator work a way we can keep people on county roads to their public lands.

We had some concerns with that on **SB 171**. We wrote to the Governor because we were trying to deal with identifiable boundaries and were concerned because there's a lot of land that doesn't have any boundary markings. The Governor wrote back and said "Director Graham has committed to working with land management agencies to mark access to existing public lands to reduce potential for trespass. Retaining access to public lands is a growing problem and must be a priority in the future." I think we all realize as more roads are blocked off, you're pinching people into smaller areas. If we keep our county roads open, at least we can spread those people out over their public lands. **SEE EXHIBIT(ags50a07)**, written testimony.

Bill Holdorf, Skyline Sportmens Association, Anaconda Sportsmens Club, told about a situation he ran into on a county road. It's still open just because he had enough nerve to get involved. Most of you are familiar with Clarks County Dam south of Dillon. I've hunted and fished there for years, so I'm familiar with the roads. Around the back of the dam is a road that accesses all the way around the dam. Some people with 20 acres put a fence across the edge of their property. On the other end, they wired a cattle guard shut. The cattle guard is on Bureau of Reclamation land. That's the old county road. They had sheep and a few cows and didn't want anybody around there. I went to the Bureau of Reclamation and also to the County Commissioners. With a lot of red tape, we got it opened up. The Bureau people cut all the wires off that cattle guard. Now it's still on public land but they do have a gate in front of the cattle guard and one on the other end. I'm not opposed to that at all because I'm allowed to go through it. My main purpose of going in there

is to hunt geese. The only way I could get in there with my decoys was to use that road. This is a situation that never would have occurred if we had something like this bill to protect us.

Leroy Mehring, Skyline Sportsmen Association, has had several dealings in the past few years with County Commissioners on proposed road closures. One was in Madison County called the McHessor Creek Road. Most of the road goes through private property but it accesses about 24,000 acres of BLM and state land. At one time in the past there had been litigation over it. The Montana Supreme Court, in July 23, 1963 declared a 60 foot county right-of-way from McHessor Creek to the top of the Ruby Mountains. The landowner who owns property on both sides petitioned the County Commission to abandon the road. Because of this earlier decision the road wasn't abandoned. The sportsmen and public had to make a concession it would be only foot and horseback up this 60 foot right-of-way to get to the Federal and State lands.

We have one in Jefferson County, McCarty Creek road. The County Commissioners were petitioned by three landowners to abandon the road. The County Attorney assessed everything and said it was a county road. The county abandoned part of this road. The two landowners on the part they didn't abandon are having a fit over it. It went to Judge Davis's court and Judge Davis said it was a county road. He read a part of a letter from Forest Service to Jefferson County Commissioners. **SEE EXHIBIT(ags50a08)**.

Sam Babich, Butte, has been to many hearings and many counties over this exact problem. This bill will alleviate some of the problems we have. I've traveled roads in the upper Big Hole, Jefferson County, Madison County, Beaverhead County that I've traveled since I was a kid. In the last five years, I have found numerous roads that have been locked by private landowners. With legislation like this, we have some power to get these roads open under a legal maneuver. There isn't a month goes by that you don't read in the paper where this or that road has been challenged and another road has been locked up. With legislation like this we have a law behind us to guarantee us the rights to use our public lands. In the fuedal days, it was lords and the rich that used the lands and the public was locked out. Nowadays it's the rich that are locking normal citizens out. We need legislation like this.

Tim Ravndal, Townsend, Over the years I've seen more and more public and private roads being shut down, almost on a day to day basis. I request you support this bill and give us a foothold to

help keep some of the roads we've had historically keep them open so we can use them, and most importantly, so future generations can use these roads to access our public lands.

Van Jamison, Montana Wildlife Federation, It comes as no surprise to you that the Montana Wildlife Federation is very anxious to maintain public access to public lands. We believe **HB 352** takes some important steps towards achieving that goal.

Mike Collins, Independent Montana Miners, Montana Mining Assoc. stand in support of this bill. It's a component part of a process we are trying to implement in maintaining our implied easements and our right-of-ways to both Federal and into and through State land. This has a historic background. Montana did not become a state until 1889. There were a lot of people in the Territory of Montana prior to 1889 for primarily two purposes. Number one was mining. As a result of a 1866 law, right-of-ways were created all through the Territory, prior to the land selections being made to the State of Montana. In a lot of cases, these implied easements and these right-of-ways fell within those land selections that were made for the State of Montana, the school sections and sections for other purposes.

Private property owners are being denied access due to changes of ownership and changes in land management regimes and schemes. Contemporary laws have pushed history into the background and covered up the history where these right-of-ways and implied easements were created. We're dealing with State lands in this part of the process and protecting these right-of-ways and easements. We need Montana to recognize that these easements and right-of-ways do exist. My members feel it is a duty of the State of Montana to protect the rights of private property owners who have vested rights and interests in private property. They should continue to have unimpeded ingress and egress to their property.

Bob Bugni, Prickly Pear Sportsmen stand in support of **HB 352**. Access is our members' number one issue. If we can't access our public lands, the value of the public is greatly reduced. **(Change Tape)** It's very difficult to stay abreast with all the petitions to abandon county roads. Each county does it their own way and notices the public in different ways.

L. F. Thomas, Anaconda Sportsmen, Deer Lodge County Commissioners had the foresight to go on record as not abandoning any more county roads. I hope this committee does the same.

Stan Frasier, Montana Wildlife Federation, One of our primary concerns is access to public lands. Roads are important to all of us. There has been many cases where at the request of perhaps one individual, two county commissioners can concur and close access to everybody.

{Tape : 2; Side : A; Approx. Time Counter : 4.30}

Opponents' Testimony:

John Munding, Montana Stock Growers Assoc., Montana Cattlemen, Sections 1 and 2, subsections 4 and sections 3 and 4 are just fine. We concur with several things the proponents of this bill said. We have no problem with maintaining public access to public land. However, we have a serious problem with intending to transfer the burden of responsibility for maintaining public access to public lands from the public to the private sector. That's what we think happens on lines 6 and 7 and lines 17 and 18 on page 2.

When landowners petition for closure of county roads or county right-of-ways, they're doing so because the county has de facto ceased to maintain those roads. The burden of responsibility for maintaining those roads for weed control, concern about trespass on private land, and concerns about liability all fall on the private landowner. If you want to prevent the county from abandoning county roads and county right-of-ways, you have to include in this measure some kind of funding source so the counties can keep those roads open or require they work with a federal agency. If the Forest Service wants to keep that road open, let the Forest Service sit down with the county and pick up responsibility for maintaining the road. But don't put that burden of responsibility on the private landowner.

Questions from Committee Members and Responses:

SENATOR HOLDEN On page 2, line 6 and 7, it seems like an incredible stretch for you to say that private landowners are going to be responsible for county roads that aren't closed.

John Munding Private landowners petition to close them because the counties aren't maintaining them. In the one in Powder River County one of the proponents referenced, that's basically what happened. Ten landowners petitioned to close that road because it wasn't being maintained. BLM didn't want to pick up the responsibility for it and the road crossed private land. It's when you have a county road on private land accessing public land

that is not being maintained with public resources that we have concern.

SENATOR HOLDEN Wouldn't the county roads that exist there already have a county road easement through that private land?

John Munding Yes, and if the county is maintaining the road, there's not a problem.

SENATOR HOLDEN If the county is not maintaining the road but the county is using it for access, why would the private landowner ever think he would have to do anything other than what he's done for the last 100 years.

John Munding If it's a road, it's probably not a problem. If it's a two track trail it probably is.

SENATOR HOLDEN If it's a two track trail, why is it probably a problem?

John Munding You have concern with potential trespass off that trail, concerns for liability because the road is not being maintained, concerns for weed control, all of which are county responsibilities if it's a county road. If it's not being addressed by the county, who's responsible for it?

SENATOR HOLDEN You talked about trespass off a county road. Doesn't that exist anywhere in Montana at anytime?

John Munding Again the concern is whether or not the county thinks it's a road and if they are taking care of their situation. I'm not advocating circumstances like Mr. Holdorf described down at Dillon, for example. If you have a legal road and somebody is illegally closing it, that's a problem that needs to be addressed.

SENATOR HOLDEN I've defended landowners by way of their personal liability insurance policies for fourteen years. I don't see the liability in having a county road through your property.

John Munding Your client still had to go to court, didn't he? Even though you were successful in defending him?

SENATOR HOLDEN I've never had that sort of a case.

John Munding I'm sharing with you the concerns of my clients with this bill.

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SENATOR MESAROS I'm not familiar with the process of abandoning county roads, but if I recall correctly, it takes a certain amount of signatures of the surrounding landowners to petition the county to abandon it. Isn't this more of a local issue for counties to respond to in managing their roads? I'm referring to page 2, lines 6 and 7 that says by statute that county road, if they abandon one they have to build another or provide access. Isn't this addressed through the public hearing process that the counties are required to go through on a local level?

REP. BRAINARD As I understand the abandonment process, generally a petition is brought to the county by landowners at a terminating point of the road. They petition that portion of the road be closed and there can be a hearing. If you take a look at lines 8 and 9, we're talking abandonment when the road goes to private land. Essentially what we're doing here is providing, if all those landowners agree to the petition of closure of the road that services private land, indeed it can be closed and will become a private road.

The issue we're talking about regarding public lands is the point where some of the adjoining landowners on the county road that does go to public land have decided yes, we would like to petition to have this road close and thereby deny the public access to public land, in effect shutting off that portion of public land. Let's say that road is not a particularly good road and as Mr. Mundinger was talking about, might be a track or something that hasn't been maintained. If indeed another road has been built that services the same area but from a different angle, then they can shut down the one road and the other road does substantially the same thing.

I would suggest these county roads have received state gas money. Every county sends a register of their rural roads to the Dept. of Transportation. In the basement of the Transportation Building they have a stack of maps of the county roads that receive state gas tax money to maintain county roads. Likewise the counties also get money from the Payment In Lieu of Tax payments that are supposed to go into maintaining rural roads as well.

SENATOR EKEGREN I abandoned a road. In the process of doing so, I petitioned the County Commissioners and then we advertised for three or four weeks to see if there was any opposition. I was always under the impression if there were right-of-ways in existence for X amount of years, if they were used they couldn't be taken away. Apparently that's not true. No matter how we think of Ted Turner, I can't imagine he has any more influence on

the closing of roads than anybody else. Obviously the fact the road has been in existence for years and years doesn't give it any credence to stay in existence.

REP. BRAINARD For example, if a county road is abandoned, it goes back to the adjacent landowners. If that road passes through a single block of land owned by one individual, that easement would go back to the landowner. If you had two landowners, one on each side of the road, I'm assuming that half would go to each. An interesting sidelight would be, what about the county road that passes through federal land, what happens if the Federal Government petitions to abandon it? It comes to the same question. At what point along the road may somebody petition to close it?

SENATOR EKEGREN If those roads are in existence and somebody petitions to close them, does it have to be property owners that oppose it, or can sportsmen who want to access public lands also oppose?

REP. BRAINARD As I understand it, the abandonment of the county road is the decision that is made by the county and there would be no existing easement or right to that right-of-way once it was abandoned by the county. That would be different than a prescriptive easement where there has been an easement across private land. That is a continuing legal entity to be defended in court, not necessarily by law but more by court cases and court precedent. In effect, if the county road is abandoned, that access to the public land has been cut off.

SENATOR EKEGREN Were they abandoned in the past or are they being abandoned now by the counties.

REP. BRAINARD We are talking about current open roads that could be abandoned or have been petitioned recently and abandoned. This is not a historic situation, it is on-going and one we need to guard against in this state if we want to keep our arteries of commerce open.

SENATOR EKEGREN When I abandoned my road twenty years ago, I had to advertise in the paper for three weeks waiting for opposition to my abandoning that road. What would happen in this case?

REP. BRAINARD You're looking at two out of three votes of the county commissioners. Just because there's opposition in the hearing doesn't mean you win the day.

SENATOR BECK There's a difference between a county road and a public road. Would this county road have to connect to public land. If it didn't connect to public land, would it still be eligible to be abandoned?

REP. BRAINARD The way this bill is drafted, the county road has to access public land. The public land would be a terminus point. If you have a situation where the county road that has been dedicated to a county ends at a person's private property and there has not been a county road that goes through to public land and this will not create an easement or right-of-way across that private property, where that road is now just keeps that road in existence.

SENATOR BECK A lot of county roads went to private property and then they stopped. There would be a public road going on up to actually get to the public land. It's that stretch right in there that's a real question. I wanted to make sure your understanding is that the county road will actually access the public land.

SENATOR HOLDEN On page 1, section 1 you're talking about state land, school land. In section 2 you're talking about what the county commissioners are doing about granting right-of-ways. I'm looking at page 1, line 15 where you're talking about the board, I'm not sure which board you're talking about.

Doug Sternberg I believe the Board of Land Commissioners. That section one has been going to the State Land Code.

SENATOR HALLIGAN Is a non-exclusive easement defined somewhere?

REP. BRAINARD In the Highway Committee Executive Action on this, **REP. TREXLER** amended this bill because the concept of right-of-way is an actual owning of the property. There was some concern if you purchased the right-of-way across the state property, would you then own that actual physical land as the right-of-way and be able to keep other individuals off who might be on state land. The committee amended this with the term non-exclusive easement. You would have that permanent easement for use to your property, but it does not give you the ability to keep people off that state property.

SENATOR HALLIGAN There's a difference between a county road and a public road.

REP. BRAINARD I believe the definition under the highway section we have in the code, there is a definition of public road which

is a publicly traveled way that may or may not be a county road. There are some gray areas and I believe our code is lacking in definition regarding some of these issues. We're not really up to date on some of our definitions and probably need some more legislation in the future on that. You notice there is not discussion of a public road in this. We're talking strictly about a county road that accesses public land.

SENATOR HALLIGAN On the amendment, I'm trying to see what was placed in here by the Committee or on the Floor. It looks like page 2, line 9, "unless all the landowners agree", was placed down on line 20.

REP. BRAINARD It was a Floor amendment. **REP. ANDERSON** had some concerns about being able to close a private road that serviced nothing but private property. We changed the way that read in the Committee.

SENATOR BECK I question the need for Section 2. I didn't thing counties owned much land and didn't think this would be much of a problem. Is it a problem in some areas?

REP. BRAINARD Missoula County has land we are selling. There are occasions possibly where counties require open space. I understand certain parts of this state would not be able to fathom why a county would want to purchase open space. There are counties and cities that want open space and this is used to address some of those situations where you might have an easement going across county property. To my knowledge there's nothing that requires a county to give a permanent easement. If that easement to your private property is the only way you can access it and you cannot clearly define that you own that easement and have a legal right to it in perpetuity, trying to do any development or using that as collateral on a loan, the banks won't do it. People have told me if you don't have guaranteed access, you don't get any money out of it.

SENATOR BECK If you have a prescriptive easement, you've got the right to go to and from your property but you don't have a set easement? If I've had that for years, now we're talking public road to a certain extent or is this private road that this goes to and I can get that easement across state land.

REP. BRAINARD You cannot have a prescriptive easement across state land. You do not have a legal right as you would across private land. You would have perhaps a historic easement, but it's not guaranteed to you. Let's say the county road ends at the state property line and there is a FWP road through there

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which you use for access. Under this scenario, you would have a permanent easement on that road, from the county road across the state land to your property. But you would not own it in the sense you could stop the public from going on that road until they got to your property.

SENATOR BECK I would have a permanent easement, non-exclusive just to me.

REP. BRAINARD The exclusive easement would set up a condition where you control the easement to any other traffic. This says you have the easement for your use, but you do not have the exclusive easement on that road as it is being maintained by FWP or whoever.

SENATOR BECK This would be great for a private road, too, just to get to and from my own property. Say I had to go across somebody else's property plus a state section, but yet it's somewhat of a private road.

REP. BRAINARD Exactly. You might have a situation in some of these places where you have a prescriptive easement across a piece of private property to your property and you're crossing state property in between. At the present time you do not have a legal right to that state property. This would give you the extension, then, and actually give you that legal right.

SENATOR BECK Does the word non-exclusive make it a public road?

REP. BRAINARD It wouldn't in this sense because of your prescriptive easement across the private property. That private property owner stops anyone else.

Closing by Sponsor:

Rep. Brainard If you take a look at the name of the sponsors on here, I don't think you'll find us hostile to agriculture or private property rights. If you do pass it through your Committee, **SENATOR TAYLOR** will probably carry it.

{Tape : 2; Side : A; Approx. Time Counter : 5.02}

(Recorder turned off while waiting for REP. MCCANN)

HEARING ON HB 571

Sponsor: REPRESENTATIVE MATT MCCANN, HD 92, HARLEM

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OUR OPINION

Issue of next millennium will be public lands access

A dispute over a locked gate across a Big Timber-area road that leads to publicly owned Forest Service land is just the latest in a growing number of its kind with the promise of a lot more to come.

Two Big Timber-area landowners have placed the gate across the Cherry Creek Road where it crosses their land. They maintain it is their right to do so, even though the road was open to 16,000 acres of Gallatin National Forest for access by loggers and recreationists for as far back as anyone can remember.

The Public Lands Access Association has filed suit over the gate. The association has been on the front lines of a battle that will be one of the biggest for Montanans in the next millennium: Maintaining access to what is rightfully ours.

Public lands are arguably the biggest contributor to the often mentioned quality of life that is Montana's biggest draw to newcomers and most highly valued asset to natives.

Think about it: Do you like those panoramic, snow-covered, mountain vistas on every horizon? Public lands. Do you like hunting elk in an uncrowded stretch of forest where there's a real chance of bagging your quarry? Public lands. Do you draw serenity from the knowledge that an untrammelled patch of woods waits your sole presence within minutes of home whenever you need it?

Public lands.

Public lands are valuable to each and every one of us. In fact, they're so valuable to some they've figured out ways of locking them up for their own private use by buying up private lands through which it is accessed. That's what's become of Gallatin National Forest lands that can only reasonably be accessed by the Cherry Creek Road.

And as the nation's population increases and open space become more and more scarce, wealthy individuals are going to concoct more and more plans for locking up public lands for private use.

This should serve as a clarion call to all Montanans who cherish their quality of life.

Fighting to keep public access open can be time-consuming and expensive. Establishing long-standing public use as a basis for continued access can be difficult when it's contested by good lawyers. Buying new public rights-of-way at platinum real estate market prices can be a big drain on taxpayer dollars.

We should all rally behind the Public Lands Access Association in their efforts, and we should demand that the Forest Service protect access to forest lands jealously — calling upon the help of our congressional delegation when necessary.

These are battles worth fighting. Because if we don't win them now, they can be lost forever. And that will be a real loss to each and every one of us.



United States
Department of
Agriculture

Forest
Service

Beaverhead-Deerlodge
National Forest
Jefferson Ranger District

3 Whitetail Rd.
Whitehall, MT 59759
(406) 287-3223

File Code: 5460

Date: September 19, 1997

Jefferson County Commissioners
Box H
Boulder, MT 59632

SENATE AGRICULTURE

EXHIBIT NO. 8

DATE 3-5-99

BILL NO. HB 352

Dear Commissioners:

You are now well aware of the results of our McCarthy Creek Road Working Group. Thanks for attempting to resolve the issue through public involvement, and for including the Forest Service. The group tried to agree on a workable solution, but got bogged down in trying to protect their perceived rights. Even though we had some rough moments, I think the three meetings were worthwhile. Some relationships were tested and some were strengthened. I believe the majority of the group would come back together to work out solutions. Please extend my thanks to Buck Harris for doing a good job of trying to get the group to come to a consensus.

I think you understand the Forest Service perspective on the importance of establishing the McCarthy Creek Road as an open county road. My main problem with some of the alternatives discussed was that many did not provide an open, unencumbered, permanent route to the National Forest. For the Forest Service to enter into a Schedule A agreement with the County for road maintenance etc., it's only prudent that the road be permanent (recorded easement or a county road). My August 29, 1997 letter articulates the need for permanent access in McCarthy Creek to adequately manage the large block of public land in the southwestern Elkhorn Mountains for multiple-use purposes.

If the Commissioners choose to deny the petition to abandon, the Forest Service will assist Jefferson County with road maintenance, signing, law enforcement, and if needed, assistance on identifying a future alternative County road location, should the County and other affected parties feel this is a worthwhile endeavor.

I feel that abandonment of the McCarthy Creek road without first implementing a suitable alternative for permanent public access is an unacceptable strategy. The involved landowners have shown no indication of granting permanent, unrestricted access to the public land. I believe we would be at a stalemate for perhaps several years, with the public being the loser.

This is a difficult but necessary decision to make. Please have the best interest of the public in mind when making your decision. Please contact me if you would like further assistance or input.

Sincerely,

GRANT GODBOLT
District Ranger

cc: d.austin



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DATE 3-5-99

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: HB 345, HB 352, HB 571

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Bill Holdorf	494-6023	SKYLINE SPORTSMEN	HB 352	✓	
Tim Kaunda	266-5212	Self			
SAM BABICH	494-7577	PLANT	HB 352	✓	
Paul Thompson	723-8234	Gilman Const	HB 345		✓
Mike Foster	442-4162	MT Contractors' Assoc.	HB 345		✓
VAN HILDRETH	406-252-8285	EMPIRE SAND & GRAVEL	HB 345		✓
LEROY A. MEHRING	406-723-5996	SKYLINE SPORTSMEN	HB 352	✓	
ED MARONICK	406-449-4007	MARONICK Const. Co.	HB 345		✓
Lena Kain	442-9476	MT. FARM BUREAU	HB 352 HB 345	✓	
Ted Coffman	843-4277	MADISON County	HB 345	✓	
Arta J. Murray	237-7569	Int. Intermountain	HB 352		✓
L.F. THOMAS	563-7992	ANACONDA SPORTSMEN	HB 352	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-5-99

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: HB 345, HB 352, HB 571

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
DAVID GRIMLAND	322-1117	Stillwater County Wood Prod	345	✓	
Alfred Bare	322-4546	Stillwater County Com.	345	—	
Vaughan	443-0815	Montana Wildlife Federation	352	X	
Bill Furbush	285-3515	Public Land Council	352	X	
Alexander Duncan	443-1469	Private Business	345	X	
Tony Schoonen	282-1560	Public Lands State Land	352	X	
Terry Turner	395-4555	Landowner	345	X	
John Munding	442-3420	MSGAT	352		✓
Jim Collins	227-582	IND MT MINERS	352	✓	
D. John Black	444-6158	MDT Info	345		
Paul Fisher	758-5778	FH County	345		
Terrie VanBuren	256-2731	Yellowstone County	345	✓	
MARIN MALONE	333-4745		345	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-5-99

SENATE COMMITTEE ON Senate Agriculture

BILLS BEING HEARD TODAY: HB 345, HB 352, HB 571

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Stan Friesler	443-3424	MWF	HB352	X	
David Schulz	843-5594	Madison Co Weed	HB 345	X	
Travis Chevalier	222-2014	Park Co. Weed Board	HB 35	X	
Ann Rausen	266-3509		HB345	X	
Leo C. Schlenker	⁴⁰⁰ 887-9388	Dall Co Weed Board	HB345	X	
Gayleen Malone	333-4745	Park Co. Preservation District	HB345	X	
Richard Fairweather	547-2196	Mendenhall Co.	HB 345	X	
Mike Murphy		Mt. Water Res. Assn	HB571	X	
Bob Bugni	222-2744	Oriskany Park Association	HB 352	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **SEN. JON TESTER**, on March 8, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 373, HB 531, 3/2/1999
Executive Action: HB 130, HB 345, HB 352, HB
531, HB 232, HB 373

HEARING ON HB 373

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN

SENATOR MESAROS They want to have a noxious weed management plan approved by the county before they proceed with their permitting.

SENATOR BECK It would take major amendments to the bill to do something like that. Right now, they have to do something to control the weeds before they even take dirt out. (Turn Tape)

SENATOR HALLIGAN I don't know if the counties are out completely. Where is "operator" defined? This is the bill we wanted DEQ on. Maybe the Chairman could have the secretary call DEQ and we can hold this bill over for one day.

SENATOR HOLDEN I don't think there's support for the bill, so why waste the Dept.'s time.

Doug Sternberg Operator is a person engaged in or controlling an open cut mining operation. Person is a natural person, a firm, association, partnership, cooperative or corporation, a department, agency or any governmental subdivision or any other entity.

Vote: Motion carried 6-5. Roll call vote with **SENATORS JABS, HALLIGAN, MESAROS, NELSON** and **TESTER** voting no.

{Tape : 1; Side : B; Approx. Time Counter : 3.49}

EXECUTIVE ACTION ON HB 352

Doug Sternberg distributed amendment **SENATOR BECK** had requested. **SEE EXHIBIT(ags52a07)**. This is on the access to public land. You indicated you would like some language similar to this in Section 3, which deals with the county. If you want the same provision to apply, you would have to insert that same language in Section 4, line 17.

SENATOR BECK I'm trying to say the board may not abandon county road right-of-way access to public land unless another public right-of-way provides substantially the same access. I'm trying to make sure the terminus of that county road or right-of-way is on public land. In our county, a lot of public roads go partway, then it could be a public road, a Forest Service road, whatever. You can't abandon a road if its terminus is public land.

SENATOR JERGESON and **SENATOR BECK** each drew a picture on the blackboard of county road accessing public land. A discussion followed on terminus of the road and what could be abandoned.

SENATOR BECK withdrew his amendment.

Doug Sternberg There was a question on the use of the phrase non-exclusive easement. It's not actually defined but there is one place in the MCA, Section 9 in 77-1-130, that says "for the purposes of the section, historic right-of-way deed means a document issued by the Dept. granting to the applicant a non-exclusive easement over state land". The phrase is not actually defined but it is used. Apparently the Dept. of State Lands has had some application of that phrase. I presume that means the underlying easement itself is established but it's not established exclusively to one party.

SENATOR JABS Was there concern about who's going to maintain this road once it's abandoned?

SENATOR BECK The county I was a commissioner of did what they called dedicated roads. They listed the roads they were dedicated to maintain and upkeep. They didn't abandon all the unnecessary roads; they just dedicated the ones they were going to use for maintenance. Some of those roads did go all the way into the mountains but that was the right-of-way for people to go up there. It went to the public land, but it also served for private landowners as an easement to get to and from their own property. If you went through the abandonment process and didn't furnish them an easement, they could have been landlocked out of their property. As far as maintenance goes, I don't think that's a big issue, at least in the county I was from. I think there's a real difference between a county road, a dedicated county road, a private road and public road.

SENATOR JABS If it goes through private land, the private person will maintain it because it goes from there into federal land and nobody lives there. Who's going to maintain it, keep the weeds down, etc. That was the concern somebody had.

SENATOR MESAROS In your abandonment process, why isn't it being addressed at the local level. Don't they have adequate means to address this at the local level. I question the need for line 6 and 7 in the bill.

SENATOR BECK County Commissioners have abandoned roads that were the only access to the public land. Once that happens, the gate is locked and the public is out of there. Even the Forest Service had fought these a time or two. At least in our county, all the county roads lead up to the public land. Very seldom you see a county road go through the public land back to private ground. My theory is, if there's a county road going to public land, I don't think they should be shutting that road off to keep the public out.

{Tape : 1; Side : B; Approx. Time Counter : 4.08}

SENATOR EKEGREN You're talking about dedicated roads and I'm taking that to mean maintained roads. Is that a big concern to the hunters and fishermen? They're concerned about access; they don't really care how that road is maintained.

SENATOR BECK The county only takes the roads up a short way and the Forest Service picks them up. Counties, a long time ago, figured that out and said, hey, we're not going to go clear up to nowhere. The county is more concerned about going to a residence and that's where they maintain the roads to. Once it goes past that residence, the Forest Service maintains the road.

Motion: SEN. HOLDEN moved that HB 352 BE CONCURRED IN.

SENATOR JABS If the county is forced to keep that road open and it goes to Forest Service, there's some liability involved. You said the hunters don't care what shape it's in, but if it gets to the point where somebody has a wreck, then there's a lawsuit. Who is liable if the county is forced to keep this road open.

SENATOR HALLIGAN I'm sure there's a reasonable standard they're going to have to maintain.

SENATOR BECK If it got to the point it was impassable, I would assume either the Forest Service, the county or a combination of the two would come in and fix that road. Counties are going to accept that liability exposure; they have a lot of it on the main county roads they have problems with.

SENATOR MESAROS I don't condone any activity blocking off access to public ground at all. This is a local issue, especially when it comes to counties. We had a road that went through some property, a county road they wanted to officially abandon. We had to get so many landowners to sign it, go through public notice and a public hearing to get input from the area people who would be affected. I'm concerned whether this is necessary when I believe it's being handled at the local level.

SENATOR BECK You could have twelve people say yes, we want to abandon it. Then is that for those twelve persons' exclusive right, maybe be twenty - thirty sections of forest ground that has no other access.

SENATOR MESAROS I agree with the statement. With the processes that are established right now, I believe it can be handled by

the people who are most familiar with that area, through the public hearing process and public notification.

SENATOR BECK The bill wouldn't be in here if it were being handled at the local area.

SENATOR HALLIGAN You can abandon a road even with public input. You get about twelve of those landowners convinced they don't want the road anymore and they can abandon it, unless you can't provide other access. Local control hasn't been fair in some of those cases where it's the only opportunity for access.

Doug Sternberg There are two new sections that do address provisions that allow purchase of historic easements that's not clear in the law right now.

SENATOR BECK There are two sections in this bill, one is the access issue, the other is the easement. You should have the right to purchase that easement.

SENATOR HOLDEN There's a better perspective on this bill from eastern Montana and that is the easement. Right now we have farmers and ranchers who are technically locked out of their land if the road goes across state and public lands and accesses a section that's isolated behind public land. We have farmers and ranchers in eastern Montana who don't have legal access to their property. They need to purchase easements through state land.

In Daniels and Sheridan Counties, when they established the reservation they stuck this government land through those counties. Those people have government land that isolates their sections of land. When they try to get a loan from their banker, he says he can't give money on the potential grain crop on that section because they have no legal easement. People have used these roads for over 100 years to haul grain and cattle out of the hills. I've received a lot of calls about purchasing easements over state property because people can't sell sections and can't get their product to market.

Vote: Motion carried 10-1 with Mesaros voting no.

EXECUTIVE ACTION ON HB 531

Motion/Vote: SEN. NELSON moved that HB 531 BE CONCURRED IN.
Motion carried unanimously.

EXECUTIVE ACTION ON HB 232

SENATE AGRICULTURE

EXHIBIT NO. 7

DATE 3-8-99

BILL NO. HB 352

Amendments to House Bill No. 352
3rd Reading Copy

Requested by Senator Tom Beck

For the Senate Agriculture, Livestock and Irrigation Committee

Prepared by Doug Sternberg
March 8, 1999 (8:42AM)

1. Page 2, line 6.

Following: "land"

Insert: ", if the terminus of the county road or right-of-way is
on public land,"

- END -

DATE 3-8-99

SEN:1999
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CS-09



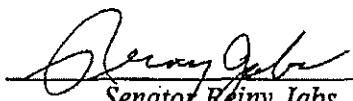
SENATE STANDING COMMITTEE REPORT

March 9, 1999

Page 1 of 1

Mr. President:

We, your committee on Agriculture, Livestock and Irrigation report that House Bill 352 (third reading copy -- blue) be concurred in.

Signed: 
Senator Reiny Jabs, Chair

To be carried by Senator Mike Taylor

- END -

Committee Vote:
Yes 10, No 1.



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